

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
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DATE: October 2, 2009

SUBJECT: Family Law: Child Custody Evaluations (amend Cal. Rules of Court, rule 5.220; revise form FL-327; adopt form FL-328, and approve form FL-329-INFO) (Action Required)

Issue Statement

Assembly Bill 1877 (Stats. 2008, ch. 215), effective January 1, 2010, amends Family Code section 3111 and authorizes the court to impose a monetary sanction for the unwarranted disclosure of a written, confidential child custody evaluation report. This bill also requires the Judicial Council to adopt a new form and rule by January 1, 2010. The new form is designed to be served with every child custody evaluation report to notify the report recipient of the confidentiality of the child custody evaluation report and the consequences of its unwarranted disclosure. The new rule will require that the form be included as the first page of the report that the evaluator files with the clerk of the court and serves on the parties, their attorneys, and counsel appointed for the child.

Recommendation

To implement and promote compliance with the statutory mandate of Assembly Bill 1877, the Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010:

1. Amend rule 5.220 of the California Rules of Court, Court-ordered child custody evaluations, to include the statutorily mandated notice regarding the confidentiality of the child custody evaluation report;
2. Revise *Order Appointing Child Custody Evaluator* (form FL-327) to reference the new, mandatory form *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) and conform to case law regarding the scope and purpose and the determination of fees and costs of the evaluation.
3. Adopt *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) as the new form mandated by statute; and

4. Approve *Child Custody Evaluation Information Sheet* (form FL-329-INFO) to educate parents about the process and confidential nature of child custody evaluations.

The amended rule and forms are attached at pages 10–15. The text of AB 1877 is attached at pages 33–34.

Rationale for Recommendation

Amendment to rule 5.220, Court-ordered child custody evaluations

The amendment to this rule would comply with the mandate of AB 1877 by including a new subdivision (i) titled “Service of the evaluation report.” This subdivision would provide that when a court-ordered child custody evaluation report is served, the proposed *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) must be included as the first page of the child custody evaluation report.

Revision of Order Appointing Child Custody Evaluator (form FL-327)

The revisions to this form would include a new item 6 to refer the parties to the proposed *Child Custody Evaluation Information Sheet* (form FL-329-INFO) and include a link to the California Court’s Web site, where the parties can access the information online. This reference would help connect parties to information about custody evaluations early in the proceeding and promote a better understanding of the evaluation process.

In addition, this form would be revised to promote greater compliance with rule 5.220(d)(1)(B). Under this rule, each court must give the evaluator, before the evaluation begins, a copy of the court order that specifies the appointment of the evaluator and the purpose and scope of the evaluation.¹ Item 2 of the current form states: “The scope of the evaluation is (*specify*).” This item does not specifically include the term “purpose.” Thus, the committee proposes revising this form at item 3 to read: “The purpose and scope of the evaluation is (*specify*).” This item would also include a check box for the court to indicate whether there are attachments (for example, local court forms) referring to the scope and purpose of the evaluation.

The current form also lacks a section regarding the determination of fees and costs. Under rule 5.220(d)(1)(D), each court must determine and allocate between the parties any fees or costs of the evaluation.² To promote greater compliance with this rule, the committee proposes revising this form to include a new item 4 to add space for an order on fees and costs of the evaluation and specify the allocation of the fees and costs between the parties.

¹ *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116 addressed the issue of an inadequate order defining the purpose and scope of a child custody evaluation and referenced the requirements of rule 5.220(d)(1)(B).

² *In re Marriage of Laurenti* (2007) 154 Cal.App.4th 395 restates the requirement under rule 5.220(d)(1)(D) that the trial court must determine and allocate fees and costs of a child custody evaluation.

Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328)

This new, one-page form would serve as the required notice regarding the confidentiality of the child custody evaluation report. This form would also advise the report recipients about the potential consequences of unwarranted disclosure of the report.

Child Custody Evaluation Information Sheet (form FL-329-INFO) (circulated as FL-327-INFO)

This proposed optional form would provide information to the parties when a child custody evaluator is appointed to their case. The form would address frequently asked questions such as: What is a child custody evaluation? What types of child custody evaluations can be ordered? What will the evaluator do? What do parties need to do after the court orders the evaluation? In addition, this information sheet would be another means of educating the parties about the confidential nature of the child custody evaluation report and informing them that the court can impose monetary fines for the unwarranted disclosure of the report. The proposed information sheet would also provide information about how the parties can get legal advice and access additional information on this subject.

After the comment period, the committee decided to recommend that the form be renumbered as FL-329-INFO. This should help clarify the form's use: it is not designed to explain the contents of the *Order Appointing Child Custody Evaluator* (form FL-327), and it should be made available to parties throughout the court process, not only at the time they receive the order appointing the evaluator. The form could be made available in self-help centers, family court services, and facilitator's offices.

Alternative Actions Considered

The committee considered simply restating the law in the form and the rule. However, the committee viewed this as an opportunity to provide further clarification to parties, evaluators, attorneys, and the courts regarding child custody evaluations. Therefore, the committee's proposal includes the legislatively directed content as well as the above-described revisions to existing form FL-327 and new form FL-329-INFO (circulated as FL-327-INFO) to help educate parties involved in child custody evaluations.

Comments From Interested Parties

The invitation to comment was circulated from April 17, 2009, through June 17, 2009, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list. Included on the lists were judges, court administrators, attorneys, mediators, family dispute resolution directors, social workers, and other family law professionals, such as family court services directors, managers, supervisors, and staff.

Twenty-five individuals and organizations submitted comments on this proposal. Of the 25 commentators, 8 supported adoption of the proposal as circulated. Eight agreed with the proposal if modified. Nine commentators provided suggestions for revising the forms without indicating whether they agreed or disagreed with the proposal. No commentators indicated a general disagreement with the rule and forms in this proposal.

Substantive, technical, and grammatical changes have been made in response to the suggestions. These suggestions and the committee's responses are summarized below.

A chart containing the comments and the committee's responses to them is attached at pages 16–32.

Amendment to rule 5.220. Court-ordered child custody evaluations

There were no comments regarding the proposed amendment to this rule. However, after further review, the committee believes it important to revise the rule to provide that the form must be attached as the first page of the evaluation report in three additional circumstances: when it is filed with the clerk of the court, served on the parties' attorneys, and served on counsel appointed for the child. Under Family Code section 3111(a), the evaluator must provide the report to these specific individuals at least 10 days before any hearing regarding child custody. Further, subdivision (e)(1) provides that the form must inform the report recipient—which would include the clerk of the court, the party's attorneys, and minor's counsel—of the confidentiality of the report. The committee believes that these revisions reflect the meaning of the term “report recipient” under the statute.

Revision of Order Appointing Child Custody Evaluator (form FL-327)

Three commentators specifically requested a revision to item 2 (now item 3) to include both the purpose and scope of the evaluation.

One commentator suggested combining current items 1 and 2 of the form to state that the evaluator is appointed to conduct a child custody evaluation and adding space to indicate the purpose and scope of the evaluation. The committee declined to combine the items because this recommendation would mean deleting the identifying information in item 1 regarding the type of evaluator being appointed, whether the order is for a full or partial custody evaluation, and the statutory authority for the appointment. Therefore, the committee decided to maintain item 1 as it was circulated for comment.

Another evaluator recommended that the purpose and scope section of the form include check boxes with listings of specific categories to allow attorneys to define the purpose and scope of the evaluation (including relocation, domestic violence, and sexual abuse under Family Code section 3118) and that only the court be allowed to write a narrative to describe the purpose and scope of the evaluation. The committee did not include check boxes for attorneys to define the purpose and scope of the evaluation because this form is intended to be completed only by the court. Therefore, this suggested change was not included in the form.

A third commentator suggested adding to current item 2 that “the purpose and scope of the evaluation is to conduct an investigation and analysis of the health, safety, welfare, and best interests of the child and make recommendations to the parties and to the court . . .

except as otherwise limited or expanded as follows.” The committee considered this change but believes that the section should remain as circulated because it supports the court’s authority to define the purpose and scope of the evaluation on a case-by-case basis.

Only one person provided a comment regarding the fees and costs of the evaluation. The suggestion was to combine items 3 and 4 (order on fees and costs and allocation of fees and costs) and identify with specific check boxes which party is ordered to pay, whether the parties will share the costs equally, if the court will reserve jurisdiction over this issue, and so forth. The committee did not combine these items; however, it did add specific check boxes to identify orders about payment and allocation of fees and costs and indicate that other orders made in the case are attached.

Finally, one commentator suggested that the form include a statement tracking the change to Family Code section 3111 regarding the consequences for the unwarranted disclosure of the child custody evaluation report. In response, the committee modified the form to include this language in a section titled “Notice Regarding Confidentiality of Evaluation Report.”

Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328)

Four commentators suggested changes to this proposed new form. One proposed changing the form’s layout. This commentator believed that the two-column format could cause confusion because the sections titled “Monetary Sanctions” and “Attorney Fees and Costs” did not align under the section titled “Potential Consequences for the Unwarranted Disclosure of the Report.” Another commentator suggested including space on the form to indicate the case name and number because the form is serving as a cover page. In response to these comments, the committee agreed to change the layout of the form to help make clear the potential consequences of child custody evaluation report’s unwarranted disclosure. The committee also agreed to include space on the form to indicate the case name and number.

The third suggestion was to delete the statement that the report cannot be disclosed or discussed with any person except the parties, counsel for the parties, or any person permitted access by written court order because the statement may be confusing to parties and because it could be unenforceable. The committee made this change. The proposed language was supposed to provide guidance to the parties about disclosure of the report; however, the language is not specifically included in the statute. To avoid any confusion to the litigants, the committee agreed to delete the language as suggested by the commentator and replace it with language that closely tracks Family Code section 3111. This language specifies when parties or their attorneys are to receive copies of the report and identifies those persons who have access to the report under the law.

Finally, a commentator suggested adding language to clarify that parties may disclose the report to an attorney whom they seek to hire in the child custody case. This commentator noted that this language would be helpful because many litigants seek legal representation

after the child custody process begins. The committee agreed to include the statement that parties may disclose the report to attorneys whom they seek to hire to represent them in the child custody case because there is statutory authority and case law in support of this position.³

In addition to the above comments, the Family and Juvenile Law Advisory Committee recommended adding a new section to the form titled “Access to the Report.” This section will specify those persons who have access to the child custody evaluation report under the law. It will also include the specific statutes that permit the court to release the evaluation. The committee believes it is important to include this section on the form to better educate the parties and the legal community on this subject.

Child Custody Evaluation Information Sheet (form FL-329-INFO), circulated as FL-327-INFO

Sixteen commentators commented on multiple sections of this proposed new form, as discussed below.

Specific comments were invited on the section titled “What do I need to do after the court orders the evaluation?” (which instructed that the party should contact the evaluator immediately to set the initial appointment date and time). The six comments received on this issue indicate that it is not the local practice in every county for parties to make the initial contact with the evaluator to schedule the appointment.

Only one commentator agreed with the proposed language and suggested that the Judicial Council set a standard for this practice statewide. Another commentator believed that the word “immediately” would panic the parties and suggested replacing it with “within 24–48 hours.” Another commentator stated that the proposed language contradicts the policy of their particular court and suggested either deleting this section or directing the reader to follow the individual court’s policy about setting the initial appointment. One family court investigator added that they do not want parties contacting them until after the case is assigned to a specific evaluator and the evaluator has reviewed the court file. Finally, one commentator suggested very detailed language similar to a court order, and another suggested that the form state that the parties should not contact or give documents to the evaluator except as stated in the *Order Appointing Child Custody Evaluator*.

³ In California, the attorney-client privilege is governed by Evidence Code section 950 et seq. The privilege permits the client, whether or not a party, to refuse to disclose, and to prevent another from disclosing, a confidential communication between a client and his or her attorney. The privilege begins at the initial consultation and is held by the client. “Client” is defined in Evidence Code section 951 as a “person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity.” Also, case law has held that confidences disclosed to an attorney by a potential client in initial consultations are protected even if the attorney is not ultimately employed. *People v. Gionis* (1995) 9 Cal.4th 1196, 1205; *Russo, Johnson, Russo & Ebersold v. Superior Court* (1987) 191 Cal.App.3d 1514, 1518.

The committee believes that courts should continue to have the flexibility to make orders that reflect local practice and procedure relating to setting the initial appointment. Therefore, the committee concluded that this specific section of the information sheet should be modified to state: “Follow the court order about the initial contact with the evaluator.” Such a statement achieves the goal of providing information to the parties without the instruction being construed as a court order or without contradicting any local forms attached to the *Order Appointing Child Custody Evaluator* that regulate communication between the parties and the evaluator. To provide clear guidance on this issue, the committee further agreed to include a new item in the *Order Appointing Child Custody Evaluator* (form FL-327). Item 7 allows the court to check boxes to indicate whether the evaluator will contact the parties or the parties will contact the evaluator. An additional check box will allow the court to write additional instructions concerning the initial contact.

The committee received five comments on the section of this form that was titled “What if I have a complaint about the evaluator’s performance?” The five commentators identified themselves as child custody evaluators or court investigators. While their reasoning differed, all commentators disagreed with including the proposed language in the information sheet that referred parties to licensing boards to lodge complaints about an evaluator’s performance.

Four commentators believed this information was not needed because all evaluators are required to post the complaint process in their offices or because the courts should already have a complaint protocol in place. One commentator argued that this section is “practically an invitation for the filing of a licensing board complaint” and recommended that this part either should be left out entirely or should state that the parent must “exhaust their grievance through the court process” before contacting any licensing board because court-appointed evaluators have quasi-judicial immunity. Of these commentators, one expressed the concern that most consumers do not know whether their complaint is a licensing issue and suggested that, if the council does include this language, the form should be changed to include more information about when a complaint to a licensing board is appropriate. Finally, a commentator suggested that the information sheet be changed to align with the position of the California Association of Marriage and Family Therapists and the Board of Behavioral Sciences that complaints against an evaluator must be filed with the court and responded to by the court before a party files a complaint with a licensing board.

In response, the committee reviewed how the courts in California and other jurisdictions provide information on this topic to parties involved in child custody litigation. The committee examined local rules and other published materials for content and accessibility to court users. The committee believes that it is important that litigants understand that they may address their concerns with the court about how an evaluation was conducted. Further, the committee agrees to revise the heading to read: “What if I have an issue about how the evaluation was conducted?” The information provided in this section will align

with the position of the above-mentioned professional organizations: that the party should submit the complaint to the court so that the court can respond to the party's concern.

The committee also received comments on other sections of this proposed new form. Under the section titled "Will I have to pay for the evaluation?," three commentators argued that the language in this section should be changed because Family Code section 3112 requires courts to pay for private child custody evaluations and seek reimbursement from the parties.⁴

Based upon the legislative history of this statute, the committee believes that the language in this section should not be changed.⁵ Family Code section 3112 may be used by some courts that provide court-connected child custody evaluations under Family Code section 3110 or 3118 and could be used for any of the other services listed in the section that were provided by court staff. However, this statute does not obligate the court to pay for any of the listed services performed by private individuals or agencies. For example, the court is not obligated to pay for private evaluations under Evidence Code section 730 or 733.

The committee believes that the proposed language in this section is sufficient to apply when courts appoint either court-connected child custody evaluators or private child custody evaluators. Therefore, the committee recommended maintaining the response to this section as follows: "Fees and costs for the evaluation are often paid by the parents; however, sometimes evaluations are paid by the courts. Your order should say who is responsible for paying for the evaluation."

Other commentators suggested that the form include that the evaluator may (1) write a report and make recommendations about custody *and* visitation, (2) conduct a full or limited-scope evaluation, and (3) need to contact persons other than the "child's school and child care providers." The committee agreed with these suggestions and incorporated them, with minor alterations, into the form it is recommending for adoption.

Other commentators recommended that the form provide information on substantive issues that were not a part of the original proposal. Four commentators suggested that the form include (1) language to inform the parties that they will receive a copy of the report before

⁴ Family Code section 3112(a): "Where a court-appointed investigator is directed by the court to conduct a custody investigation or evaluation pursuant to this chapter or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of the minor. If the court finds the parent . . . able to pay all or part of the expense of the investigation, report, and recommendation, the court may make an order requiring the parent . . . to repay the court the amount the court determines proper."

⁵ Family Code section 3112 has a long history beginning with its first introduced as Code of Civil Procedure section 263 (Stats. 1951, 1360, § 3). In 1951, AB 3357 amended sections 204(e), 261(e), and 263 of the Code of Civil Procedure, which among other things, authorized two superior courts to employ two domestic relations case investigators. The bill fixed their compensation and required court investigators in divorce actions where minor children were involved to investigate and report to the judge as to the care, welfare, and custody of the children. For this reason, Family Code section 3112 appears to apply only to court employees and not to private evaluators, as the commentator suggests.

the hearing, as required by Family Code sections 3111 and 3118, (2) language about the admissibility of the report and its receipt into evidence, (3) the verbatim required steps in the evaluation as described in rule 5.220(e)(2), and (4) a new section to inform the parties about awards of custody to alleged abusers. The committee agreed to expand the content of the form to generally include the first and second additions. As to the third suggestion, the committee agreed to include a reference to rule 5.220 on the form so parties could read more about what the evaluator would do. As to the fourth item, the committee believes that the proposed language exceeds the general scope of the form; this form is about the evaluation process and not about any subsequent court orders regarding child custody.

Implementation Requirements and Costs

Standard reproduction costs will be incurred in distributing the revised forms.

Attachments

Rule 5.220 of the California Rules of Court would be amended, effective January 1, 2010, to read:

Rule 5.220. Court-ordered child custody evaluations

(a)–(h) * * *

(i) Service of the evaluation report

A Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328) must be attached as the first page of the child custody evaluation report when a court-ordered child custody evaluation report is filed with the clerk of the court and served on the parties or their attorneys, and any counsel appointed for the child, to inform them of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.

(j) Cost-effective procedures for cross-examination of evaluators

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO. (Optional): _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY Draft 15 09/11/09 gs Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	
ORDER APPOINTING CHILD CUSTODY EVALUATOR	CASE NUMBER:

THE COURT ORDERS AS FOLLOWS:

1. The court appoints:

- a. ☐ a local court-connected child custody evaluation service (specify):
- b. ☐ a private child custody evaluator (specify):
- c. ☐ family court services
- d. ☐ other (specify):

in this matter to perform (check one):

- e. ☐ a full child custody evaluation
- f. ☐ a partial child custody evaluation

under the statutory authority of:

- g. ☐ Family Code section 3111.
- h. ☐ Family Code section 3118.
- i. ☐ Evidence Code section 730.
- j. ☐ Chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.

2. The names and dates of birth of the children are (specify):

☐ See attachment.

Name
Date of birth

3. The purpose and scope of the evaluation is (specify):

☐ See attachment.

PETITIONER/PLAINTIFF:
RESPONDENT/DEFENDANT:
OTHER PARTY:

CASE NUMBER:

4. DETERMINATION OF FEES AND PAYMENT

☐ See attached order on fees and costs.

a. The evaluator will be compensated as follows:
(Specify amount or rate and terms):

☐ The court reserves jurisdiction to determine the amount of the fees and costs for the evaluation.

b. The court finds that the parties are able to pay the cost of the child custody evaluation. The parties are ordered to pay as follows:

(1) ☐ Petitioner/plaintiff must pay _____ % of the cost. ☐ Respondent/defendant must pay _____ % of the cost.

(2) ☐ The court reserves jurisdiction to reallocate the cost of the evaluation between the parties.

(3) ☐ Other:

c. Payment will be made as follows:

(1) ☐ Petitioner/plaintiff must make installment payments of \$ _____ per month until the cost of the evaluation is paid or modified by court order.

(2) ☐ Respondent/defendant must make installment payments of \$ _____ per month until the cost of the evaluation is paid or modified by court order.

(3) ☐ Other:

5. NOTICE TO EVALUATOR

Within 10 court days of receipt of this order and before the evaluation, the child custody evaluator must file a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326) with the court unless the person is a court-connected employee who must annually file the *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (FL-325).

6. NOTICE REGARDING CONFIDENTIALITY OF EVALUATION REPORT

The child custody evaluation report is confidential. You must not make an unwarranted disclosure of the contents of the child custody evaluation report. By law, a court can order a penalty for the unwarranted disclosure of the child custody evaluation report, which can include an order that the disclosing party pay a fine and attorney fees and costs.

For more information, read Family Code section 3111 and obtain *Child Custody Evaluation Information Sheet* (form FL-329-INFO). This form is available from the office of the court clerk or online at www.courtinfo.ca.gov/forms.

7. INSTRUCTIONS FOR INITIAL CONTACT

a. ☐ The evaluator will contact each party.

b. ☐ Each party must contact the evaluator.

c. ☐ Additional instructions (specify):

8. OTHER

9. ☐ Additional orders attached.

Number of pages attached: _____

Date:

JUDGE OF THE SUPERIOR COURT

FL-328**Notice Regarding Confidentiality of Child Custody Evaluation Report****1 Case name:****2 Case number:**

If directed by the court, the child custody evaluator must file a written, confidential report of his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report must be filed with the clerk of the court and served on the parties or their attorneys and counsel appointed for the child.

Important Notice: This form must be attached as the first page of the child custody report. The child custody evaluation report **MUST NOT** become part of the public court file. It is confidential and private.

THE ENCLOSED CHILD CUSTODY EVALUATION REPORT IS CONFIDENTIAL

Unwarranted Disclosure of the Report

You must not make an unwarranted disclosure of the contents of the child custody evaluation report. A disclosure is unwarranted if it is done either recklessly or maliciously and is not in the best interest of the child.

- **Monetary Sanctions:** If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may order a fine against the disclosing party in an amount that is large enough to prevent that person from disclosing information in the future.
- **Attorney Fees and Costs:** The sanction may also include reasonable attorney fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Potential Consequences for the Unwarranted Disclosure of the Report

By law, the court can impose a penalty for the unwarranted disclosure of the child custody evaluation report. The penalty for the unwarranted disclosure of the child custody report can include monetary sanctions (a fine) and attorney fees and costs.

Access to the Report

This report may not be made available to anyone other than the following (Fam. Code, §§ 3025.5, 3111):

- a. The parties and their attorneys (including attorneys from whom the parties seek legal representation) and attorneys appointed to represent the child
- b. Court professionals who would receive it directly from the court to do their job, including:
 - Family court judicial officers • Juvenile court judicial officers • Law enforcement officers
 - Family court employees • Juvenile probation officers • Probate court judicial officers
 - Family law facilitators • Child protective services workers • Guardianship investigators
- c. Others, but only by court order

Information About Child Custody Evaluations

For more information, visit the California Courts Online Self-Help Center: www.courtinfo.ca.gov/selfhelp. See also Family Code sections 3110–3118 and 3025.5 and rules 5.220 and 5.225 of the California Rules of Court.

We can't agree on a parenting plan. So how will the court make a custody order?

Parents in family court need to have a plan that shows how their child will be cared for after they separate. When parents can't agree on a parenting plan on their own or with the help of a mediator, the judge will make a decision about child custody at a hearing. The judge may order a child custody evaluation to assist in this process. A parent can also ask for an evaluation. This information sheet provides general information in cases where the judge appoints a child custody evaluator.

What is a child custody evaluation?

It is an investigation and analysis of the health, safety, welfare, and best interest of the child. In cases where the court has determined there is an allegation of child sexual abuse, state law requires that the evaluator conduct a detailed investigation if the court is considering permanent child custody or visitation orders. The evaluation is usually completed by a licensed psychologist, marriage and family therapist, clinical social worker, or psychiatrist. The evaluator may be a private professional, a court employee, or a professional under contract with the court.

What kind of evaluation will be done?

The evaluator will follow the court order by investigating and making recommendations that address the issues raised in your case. For example, the court might order the evaluator to make a recommendation about these and other issues:

- **Legal custody:** Who makes major decisions about the child's health, education, and welfare;
- **Physical custody:** Whom the child lives with;
- **Parenting plan or visitation:** The schedule of when the child spends time with each parent;
- **Supervised visitation:** Whether visitation should be supervised and, if so, by what type of program and for how long;
- **Safety issues:** The protection needs of the child in cases involving allegations of domestic violence or child sexual abuse.
- **Child custody modification:** Whether an existing child custody order should be changed.

What if there has been domestic violence or a protective order?

The evaluator must consider any history of domestic violence before interviewing the parents or the child. The parties may request separate interviews with the evaluator. *Give the evaluator copies of any restraining or protective orders.*

For help, call the National Domestic Violence Hotline at 1-800-799-7233 (TDD: 1-800-787-3224) or call 211 (if available in your area).

- **Counseling:** If, and for how long, either parent should be required to attend parenting, coparenting, domestic violence, substance abuse, rehabilitation, or other programs.

What will the evaluator do?

The evaluator will conduct a full or limited-scope investigation. He or she may do all the following as part of the investigation:

- Review documents related to custody, including local police reports and juvenile court records;
- Review the child's medical, dental, mental health, and other health-care records and school and educational records;
- Observe parent-child interaction and interview parents, the child, the child's family members, and others who have had contact with the child;
- Interview professionals who have provided care for the child; and
- Consult with other experts.

Will the evaluator speak with our child?

Depending on the child's age and maturity, the evaluator may consider observing and talking with your child.

How long will the evaluation take?

This varies depending on the kinds of issues the evaluator must investigate. The evaluator will give you a written explanation of the process, which will describe the time frame for gathering and analyzing information for the evaluation.

What do I need to do after the court orders the evaluation?

1. Follow the court order about initial contact with the evaluator.
2. Promptly provide documents and information to the evaluator and to the other party at the same time.
3. If needed, sign release forms to allow the evaluator access to documents and the child's care providers.
4. Fully cooperate with the evaluation.

Will I have to pay for the evaluation?

Fees and costs for the evaluation are often paid by the parents; however, sometimes evaluations are paid for by the courts. Your order should say who is responsible for paying for the evaluation.

What happens after the evaluator completes the investigation?

If the court orders it, the evaluator may prepare a verbal or written report about the issues investigated in your case. The report may include recommendations about child custody and visitation. If the court orders the evaluator to file a written, confidential report about the evaluation, you or your attorney and any attorney appointed for the child will receive a copy of the confidential report 10 days before any hearing about custody of the child. The court may consider the report and receive it as evidence. The report will go in the confidential portion of the court's file.

Is the report confidential, or can I share it with others?

The child custody evaluation report is confidential. You must not make an unwarranted disclosure of the contents of the child custody evaluation report. By law, a court can order a fine for an unwarranted disclosure of the child custody evaluation report in an amount that is large enough to prevent the person from disclosing information in the future. The fine can include an order to pay the other party's attorney fees or costs or both.

What if I disagree with the evaluator's report?

You may object to the evaluator's report and request a hearing to explain your concerns to the court. If you do not have an attorney, you may wish to get legal help with this matter. Read the local rules of the family

law court in your county to find out how to request a hearing.

What if I have an issue about how the evaluation was conducted?

- Discuss your concern with the evaluator or the evaluator's supervisor to try to resolve the issue.
- Contact the clerk of the court to find out the court's procedures for making and responding to complaints about an evaluator.
- Follow any complaint procedures posted in the evaluator's office.
- Submit your complaint to the court so the court can respond to your concern.
- Contact your court's self-help center or facilitator program for more information.
- Consult with an attorney about raising your concern as part of your case. See information below about where to find legal help.

Does my court have special rules or forms?

Courts in most counties have local rules and forms for cases involving child custody evaluations. Courts generally provide online access to their local rules and forms. See www.courtinfo.ca.gov/rules/localrules/htm. You may also contact the family law facilitator or self-help center at the superior court in your county.

Where can I get more information about child custody evaluations?

1. Visit the California Courts Online Self-Help Center Web site: www.courtinfo.ca.gov/selfhelp.
2. Ask at your local law library or public library.
3. Read Family Code sections 3110–3118 and 3025.5.
4. Read rules 5.220 and 5.225 of the California Rules of Court.

Where can I get information or legal advice?

1. Talk to your lawyer if you have one.
2. Contact the family law facilitator or self-help center for referrals to local legal services providers and lawyer referral services.
3. Find a lawyer through your local bar association or the State Bar of California at <http://calbar.ca.gov>. Or call the Lawyer Referral Service at 866-442-2529 or 415-538-2250.
4. Seek free and low-cost legal help (if you qualify): www.lawhelpcalifornia.org.

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Family Law: Child Custody Evaluations (amend Cal. Rules of Court, rule 5.220; revise form FL-327; adopt form FL-328; and approve form FL-329-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	State Bar of California ADR/CDR South Standing Committee Sharon S. Kianfar Los Angeles	A	<p>*Re: Form FL-327-INFO (now FL-329-INFO): The commentator states that the term “Monetary sanctions” is too vague as it is used in the following sentence: “The court may impose a fine against the disclosing party in an amount that is large enough to prevent that person from disclosing information in the future.”</p>	The committee agrees to modify the form to state that fines against the disclosing party can include a fine and an order to pay the other party’s attorney’s fees or costs or both.
2.	Matthew Bovenkerk LMFT Mediator Evaluator Superior Courts of Mariposa and Merced Counties	AM	<p>*Re: Form FL-327-INFO (now FL-329-INFO): Commentator agrees with providing parties more specific information about what an evaluation involves.</p> <p>The commentator disagrees with including language that refers parties to licensing boards to lodge complaints about an evaluator’s performance because the court should already have a complaint protocol in place. However, the commentator suggests that, if the Judicial Council does include this language, the form should be changed to include more information about when a complaint to the licensing board is appropriate.</p>	<p>No response required.</p> <p>The committee agrees to change this section of the form. The new question-heading will be, “What if I have an issue about how the evaluation was conducted?” The committee proposes deleting references to licensing boards and including that the parties should seek help from the court to resolve their concern.</p>
3.	Nancy Brison-Moll, Ph.D. Licensed MFT and Clinical Psychologist Child Custody Evaluator and Family Court Mediator Stanislaus County	NI	<p>*Re: Form FL-327-INFO (now FL-329-INFO): Section “What do I need to do after the court orders the evaluation?”</p> <p>In response to the bullet point about contacting evaluators immediately, in Stanislaus County the practice has been that each party is given a set amount of time in which to contact the evaluator to make an appointment; each party is required to contact the evaluator.</p>	The committee agrees to change this section to allow the most flexibility for courts to use this form to educate litigants about their respective local rules, which may require the parties to contact the evaluator or require the evaluator to contact the parties to set the date and time of the initial appointment.

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	Commentator	Position	Comment	Committee Response
			<p>The recommendation is that it might be more helpful to state in bullet points that parties can expect evaluators to ask them for documentation and to sign releases. Providing documentation to the evaluator and signing releases would be individual to each evaluator as to when those activities take place.</p> <p>Re: ‘What if I have a complaint about the evaluator’s performance?’ section of form FL-327-INFO (now FL-329-INFO): The commentator points out that all evaluators are required to post the complaint process to their respective board(s) in their offices and suggests that the posting is sufficient in terms of providing this information to consumers.</p> <p>In addition, the commentator expressed concern about the first bullet point under this section in terms of ex parte communication. The commentator believes that any contact with parties after the evaluation is completed would probably be considered ex parte communication.</p> <p>This commentator agrees with the second and third bullet points in this section but believes that the fourth bullet point is redundant and confusing because professionals are required to provide this information in their offices and consumers do not know how tell if their complaint is a “licensing issue.” “Most consumers are very confused about licensure of professionals (again our responsibility as individually licensed practitioners is to provide this information in the first session).”</p>	<p>The committee agrees to modify the section titled “What do I need to do after the court orders the evaluation?” to indicate that the evaluator may require them to sign releases.</p> <p>The committee agrees to change this section of the form. The new question-heading will be, “What if I have an issue about how the evaluation was conducted?” The committee proposes deleting references to licensing boards and including that the parties should seek help from the court to resolve their concern.</p> <p>Family Code section 216 and rule 5.335 of the California Rules of Court do not restrict communications between a mediator or evaluator and a party in a child custody proceeding.</p> <p>The committee agrees to change this section of the form. The committee proposes deleting references to licensing boards and including that the parties follow complaint procedures posted in the evaluator’s office, and that parties should seek help from the court to resolve their concern.</p>

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	Commentator	Position	Comment	Committee Response
4.	California Protective Parents Association Connie Valentine, Policy Director Sacramento	NI	<p>*Re: Form FL-327-INFO (now FL-329-INFO) Commentator recommends specific language be included in the form as described below:</p> <p>1. This form should include specific information about the evaluation process consistent with Family Code section 3112 (regarding the repayment of fees) because parties regularly report being required to pay evaluators directly, although this statute requires parties to repay the court for the evaluation.</p> <p>2. This form should include language from Family Code section 3118(b)(6), which requires service of reports at least 10 days before the hearing, because parties regularly report having been prohibited from receiving the evaluation reports they have paid for.</p> <p>3. In addition, the commentator recommends including language regarding stipulations about the admissibility of the report and its receipt into evidence.</p> <p>4. The section titled, “What will the evaluator do?” should be changed to inform parties about the required steps in the evaluation as described in rule 5.220(e)(2) of the California Rules of Court and Family Code section 3118.</p> <p>5. A new section in the form titled “Awards of custody to alleged abusers” should be added to inform parties that the court is required to explain why sole or joint custody is being granted to a parent after allegations of abuse by that parent are</p>	<p>Based upon the legislative history of this statute, the committee believes that the language in this form should not be changed. The statute does not require courts to pay for private child custody evaluations, as this commentator suggests. The committee believes that the proposed language in this form is sufficient to apply when courts appoint either court-connected child custody evaluators or private child custody evaluators.</p> <p>The committee agrees to modify the form to include information about the parties or their attorneys receiving a copy of a report as well as a reference to the applicable Family Code sections.</p> <p>The committee agrees to modify the form to include information about the report being received into evidence as well as a reference to the applicable Family Code section.</p> <p>The committee agrees to modify the form to include references to the Family Code and rule but does not recommend changing the form to track the complete language of these sources.</p> <p>The language suggested in this comment exceeds the general scope of the form, which relates to the evaluation process, not to any subsequent court orders regarding custody.</p>

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	Commentator	Position	Comment	Committee Response
			brought to the court's attention.	
5.	Center for Judicial Excellence Jean Taylor, President San Rafael	NI	<p>*Re: Form FL-327-INFO (now FL-329-INFO) Commentator recommends specific language be included in the form as described below:</p> <p>1. This form should include specific information about the evaluation process consistent with Family Code section 3112 (regarding the repayment of fees) because parties regularly report being required to pay evaluators directly, although this statute requires parties to repay the court for the evaluation.</p> <p>2. This form should include language from Family Code section 3118(b)(6), which requires service of reports at least 10 days before the hearing, because parties regularly report having been prohibited from receiving the evaluation reports they have paid for.</p> <p>3. In addition, the commentator recommends including language regarding stipulations about the admissibility of the report and its receipt into evidence.</p> <p>4. The section titled "What will the evaluator do?" should be changed to inform parties about the required steps in the evaluation as described in rule 5.220(e)(2) of the California Rules of Court and Family Code section 3118.</p> <p>5. A new section in the form titled "Awards of custody to alleged abusers" should be added to inform parties that the court is required to explain why sole or joint custody is being granted to a parent after allegations of abuse by that parent are</p>	See the committee's response above to California Protective Parents.

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	Commentator	Position	Comment	Committee Response
			brought to the court's attention.	
6.	Commissioner John Chemeleski Superior Court of Los Angeles County Long Beach	AM	<p>*Re: Form FL-327</p> <p>The recommendation is to change item 2 to state: “The purpose and scope of the evaluation is to conduct an investigation and analysis of the health, safety, welfare, and best interests of the child and make recommendations to the parties and the court as to what parenting plan would be in the best interest of the child, except as otherwise limited or expanded as follows.”</p> <p>Another recommendation is to add “optional space to be used to limit or expand the purpose and scope.”</p>	<p>The committee believes that the recommended change is not needed because it is addressed by the form in item 1, which allows the court to indicate the statutory authority for ordering the evaluation. The listed authority is much broader in scope than the recommended “best interest of the child” language proposed in this comment.</p> <p>The committee agrees to add more space to the form to specify the purpose and scope of the evaluation in item 2.</p>
7.	Child Abuse Solutions, Inc. Meera Fox, Executive Director	NI	<p>*Re: Form FL-327-INFO (now FL-329-INFO)</p> <p>Commentator recommends specific language be included in the form as described below:</p> <p>1. This form should include specific information about the evaluation process consistent with Family Code section 3112 (regarding the repayment of fees) because parties regularly report being required to pay evaluators directly, although this statute requires parties to repay the court for the evaluation.</p> <p>2. This form should include language from Family Code section 3118(b)(6), which requires service of reports at least 10 days before the hearing, because parties regularly report having been prohibited from receiving the evaluation reports they have paid for.</p> <p>3. In addition, the commentator recommends including language regarding stipulations about</p>	<p>See the committee's response above to California Protective Parents.</p>

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	Commentator	Position	Comment	Committee Response
			<p>the admissibility of the report and its receipt into evidence.</p> <p>4. The section titled “What will the evaluator do?” should be changed to inform parties about the required steps in the evaluation as described in rule 5.220(e)(2) of the California Rules of Court and Family Code section 3118.</p> <p>5. A new section in the form titled “Awards of custody to alleged abusers” should be added to inform parties that the court is required to explain why sole or joint custody is being granted to a parent after allegations of abuse by that parent are brought to the court’s attention.</p>	
8.	County of San Diego Probation Department Pamela Martinez, DCPO Juvenile Field Services	NI	No impact to probation department. This rule promotes judicial consistency related to the confidentiality of child custody evaluation reports.	No response required.
9.	Dr. Robin Drapkin, Ph.D Senior Family Mediator Los Angeles Superior Court Family Court Services	NI	<p>*This commentator believes that the proposed prohibition of disclosure of the child custody evaluation appears to limit the ability of litigants to determine the weight and credibility of collateral input to the evaluator, which could possibly preclude (a) a check and balance on the conclusions of the evaluator and (b) the parties from negotiating a settlement based on the evaluator’s recommendations when the basis for those recommendations cannot be independently verified through disclosure of what the evaluator reports.</p> <p>The commentator argues that some evaluators do not always accurately report what has been told to them by third parties and that denying litigants</p>	<p>AB 1877 mandates that the Judicial Council adopt rules and forms that prohibit the unwarranted disclosure of the child custody evaluation report.</p> <p>No response required.</p>

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	Commentator	Position	Comment	Committee Response
			the opportunity to verify what was told to the evaluator sounds like a possible denial of due process. On the other hand, the commentator also stated that he could understand that it could be important to maintain the confidentiality of a litigant's psychological testing or drug testing findings, particularly when it could have the potential for jeopardizing that parent's employment if divulged.	
10.	Harriet Buhai Center for Family Law Erin Dabbs, Staff Attorney	AM	<p>*Re: Form FL-327 The recommendation is to include the names and dates of birth of the minor children for the evaluator's reference.</p> <p>Re: Form FL-327-INFO (now FL-329-INFO) Page 1 changes:</p> <p>In the box on page one discussing domestic violence, we recommend bolding the text "Give the evaluator copies of any restraining or protective orders."</p> <p>At the bottom of page one, the heading "What do I need to do after the court orders" is an incomplete sentence, and can be finished with "a custody evaluation."</p> <p>Under the heading "What will the evaluator do?," we recommend including the fact that the evaluator will write a report and will make recommendations to the court about custody and visitation.</p> <p>We also recommend adding that the litigant will receive a copy of the report before the hearing so that they have time to review it. Although the</p>	<p>The committee agrees to make these changes.</p> <p>For readability purposes, the committee prefers to bold only the section headings in this form; however the committee agrees to italicize the text indicated in this comment.</p> <p>The committee agrees to make this change.</p> <p>The fact that the evaluator may write a report is covered under the heading "What happens after the evaluator completes the investigation?"</p> <p>The committee agrees to include this information in the section titled "What happens after the evaluator completes the investigation?"</p>

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Commentator	Position	Comment	Committee Response
		<p>report is mentioned on page 2, we think it makes sense to mention it here as well so that litigants understand the purpose of the investigation.</p> <p>The Judicial Council sought comments about the highlighted box immediately following this heading, regarding whether or not litigants should be advised to contact the evaluator. Although the practice may vary across courtrooms and counties, the Judicial Council is in a position to set a standard for this practice. We recommend that the current language be included on the form because it is clear in its instructions to litigants. If this instruction is modified to make it vague enough to be relevant in every court, it will be confusing to litigants.</p> <p>Again, under that same heading, bullet point 3 beginning with the words “Sign releases required,” we recommend that this point be modified to say “Sign release forms to allow the evaluator....” We recommend this change simply because it is simpler English and therefore easier for litigants to understand.</p> <p>Page 2 changes:</p> <p>Under the heading “What happens after the evaluator completes the investigation,” we recommend changing the last sentence to read “The report will include recommendations about child custody and visitation.” Currently the sentence only references custody.</p>	<p>The committee’s proposed changes to the Order Appointing Child Custody Evaluator (form FL-327) allow the most flexibility for courts to attach local forms to this mandatory form when appointing a child custody evaluator. These local forms and orders also serve to educate litigants about their court’s respective local rules, which may require the parties to contact the evaluator or require the evaluator to contact the parties to set the date and time of the initial appointment. Because the committee is promoting the use of local forms in the above order, the section in proposed form FL-327-INFO (now FL-329-INFO) should be changed to reflect that parties should follow local court procedures regarding contact between the parties and the evaluator.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p>

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Commentator	Position	Comment	Committee Response
		<p>Under the heading “Is the report confidential or can I share it...,” we recommend bolding the first sentence stating “The child custody evaluation report and recommendation is confidential.” We also recommend bolding the following phrase in the last sentence: “If disclosed, the court can impose a fine against the disclosing party.” Because there is so much text on this form, bolding is important to draw emphasis to these critical points. For even greater emphasis, these portions could be highlighted.</p> <p>Under the heading “What if I have a complaint about the evaluator’s performance,” we recommend changing the second bullet point to read “Contact the court to find out the procedures for making and responding to complaints about an evaluator’s performance.” We recommend this change simply because it is simpler English and therefore easier for litigants to understand.</p> <p>Re: Form FL-328 Recommends changing the layout of the form from a two column format. In addition, suggests adding the language from the first paragraph (Confidential Report) to the box at the top of the page, so that the language in the box states “THE ENCLOSED CHILD CUSTODY EVALUATION REPORT IS CONFIDENTIAL. You must not give, disclose, or discuss the contents of this report with any person except your attorney, an attorney from whom you are seeking legal representation, or any other person permitted access by written court order.</p> <p>In our experience, many self-represented litigants</p>	<p>For readability purposes, the committee prefers to bold only the questions on the information sheet.</p> <p>The committee agrees to change this section of the form. The new question-heading will be,” “What if I have an issue about how the evaluation was conducted?” The committee proposes deleting references to licensing boards and including that the parties should seek help from the court to resolve their concern.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and</p>

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	Commentator	Position	Comment	Committee Response
			seek legal representation after the custody evaluation process begins. Therefore, we think it might be useful for this form to specify that the litigant can show the evaluator's report to an attorney from whom they are seeking legal representation.	has incorporated it, with minor alterations, into the amendments that it is recommending for adoption. Statutory law and case law support the argument that prospective attorneys are covered by the attorney-client privilege.
11.	Julie Netchaev Saugus	A	*The commentator expresses that custody evaluations contain a wealth of highly sensitive information that can range from discussions of abuse to personal finances and supports increased measures to safeguard this information.	No response required.
12.	Dr. Nancy Olesen Licensed Psychologist	A	No specific comment.	No response required.
13.	Orange County Bar Association. Michael G. Yoder, President Newport Beach	A	Agree with proposed changes.	No response required.
14.	State Bar of California, Standing Committee on the Delivery of Legal Services Sharon Ngim Program Development and Staff Liaison San Francisco	NI	*This commentator recommends changes to form FL-327. As proposed, the Committee on the Delivery of Legal Services believes it will be confusing to self-represented litigants. In addition, since in some counties this form is completed by the attorneys rather than the judge, it may allow a represented party to possibly take advantage of a nonrepresented or vulnerable party. To limit the possibility of this occurring, it may be useful to allow attorneys to define the purpose and scope of the evaluation by only checking boxes with specific categories in item 2 of the form, i.e. <input type="checkbox"/> relocation <input type="checkbox"/> domestic violence <input type="checkbox"/> sexual abuse per 3118. The option of writing a narrative to describe the purpose and scope of the evaluation should only be given to the judge to complete.	The committee does not agree that a section of this form should be added for attorneys to complete, as only the court should complete this form.

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	Commentator	Position	Comment	Committee Response
			<p>In addition, the recommendation is to combine item 3 and 4 and clarify with additional check boxes, i.e., <input type="checkbox"/> The court reserves jurisdiction over fees and costs of evaluation <input type="checkbox"/> Petitioner shall pay for the evaluation <input type="checkbox"/> Respondent shall pay for the evaluation <input type="checkbox"/> The Parties shall equally share the cost of the evaluation <input type="checkbox"/> Other: _____</p> <p>Regarding FL-327-INFO (now FL-329-INFO) and the new notice form, FL-328, the commentator recommends that both forms should be made available in multiple languages and designed with graphics and less text for low literacy litigants.</p>	<p>The committee does not agree to combine items 3 and 4 but does agree to modify the form to include specific check boxes regarding fees and payment of the evaluation.</p> <p>The committee agrees with these suggestions and will do so as resources permit.</p>
15.	Dr. Angus Strachan, Ph.D., Custody Evaluator Lund & Strachan, Inc., Psychological Corporation	NI	<p>*On form FL-327, the recommendation is to simplify and combine two parts in item 1 to state: “is appointed to conduct a child custody evaluation. The purpose and scope of the evaluation is (specify).”</p> <p>*On form FL-327-INFO (now FL-329-INFO), there are three suggested changes:</p> <p>1. On page 1, change the definition of physical custody to who the child primarily lives with.</p> <p>2. On Page 1, paragraph 5, change the third bullet point as follows: Sign releases required to allow the evaluator access to documents and information about the child’s school and care providers relevant people. This change would show that the evaluator</p>	<p>This suggestion would entail deleting the sections in item 1 that allow the court to specify whether the evaluation is a full or partial evaluation and the authority under which the appointment is made. To maintain clarity, the committee prefers to keep the sections in item 1 as they are currently drafted.</p> <p>The proposed change is a more restrictive definition of the term “physical custody” that does not include joint physical custody. Therefore, the committee recommends no change to the definition.</p> <p>The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.</p>

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	Commentator	Position	Comment	Committee Response
			<p>needs access more broadly than to just school personnel and care providers.</p> <p>3. On page 2, paragraph about the confidentiality of the report (also, form FL-328), the commentator does not agree with the language that the evaluation is not to be disclosed or discussed with any person except the parties, attorneys for the parties, or any person permitted access by written court order. This commentator believes that this is not desirable; it is impractical and unenforceable; and it might be important that a parent can discuss the ramifications of recommendations with a psychotherapist, a member of the clergy, or with friends. Instead, he recommends focusing on not copying the report and not talking to the child about the recommendations.</p>	<p>The committee agrees to delete this language because is it not specifically provided by statute and to add language that closely tracks Family Code section 3111. This language specifies when parties or their attorneys are to receive copies of the report and identifies those persons to whom the court can release the report under the law.</p>
16.	Dr. Donald Strangio Licensed Psychologist, Private Child Custody Evaluator Modesto	AM	<p>*Re: Form FL-327-INFO (now FL-329-INFO), the commentator recommends that this section should be left out completely or, in the alternative, should say that the parent must exhaust their grievance through the court process before contacting any licensing board because court-appointed evaluators have quasi-judicial immunity.</p> <p>This commentator argues that, as stated, this section is practically an invitation for the filing of a licensing board complaint. Further, instructing a parent in writing that he or she should contact the licensing board invites huge problems, when complaints about child custody evaluators are already the most frequent board complaint for licensed mental health professionals.</p>	<p>The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.</p>

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	Commentator	Position	Comment	Committee Response
17.	Superior Court of Kern County Christina Rodriguez Assistant Court Supervisor	A	No specific comment.	No response required.
18.	Superior Court of Los Angeles County Los Angeles	A	*FL-327-INFO (now FL-329-INFO), recommends changing “Contact the evaluator immediately to set the initial appointment date and time” to “The evaluator will contact the parties to set the initial appointment date and time.”	The committee agrees to change this section to allow the most flexibility for courts to use this form to educate litigants about their respective local rules, which may require the parties to contact the evaluator or require the evaluator to contact the parties to set the date and time of the initial appointment.
19.	Superior Court of Riverside County Carrie Snuggs, Regional Operations Director	AM	<p>* Re Form FL-327-INFO (now FL-329-INFO). The commentator suggests changing the last paragraph under the section “What do I need to do after the court orders the evaluation?” to state “Contact the evaluator within 24–48 hours” because the phrase “contact the evaluator immediately” would tend to panic the person. The evaluator may also not be immediately available.</p> <p>FL-328: Notice Re: Confidentiality of Child Custody Evaluation Report. Form is required to be included as page 1 of the evaluation when served. If this is a cover page, we should include a spot for case number.</p> <p>Under the caption DO NOT FILE WITH THE COURT when a court ordered child custody evaluation is served, this notice must be included as the first page of the report. Who is this referring to when it says “served”?</p>	<p>The committee agrees to change this section to allow the most flexibility for courts to use this form to educate litigants about their respective local rules, which may require the parties to contact the evaluator or require the evaluator to contact the parties to set the date and time of the initial appointment.</p> <p>The committee agrees with this suggestion and has included a place on the form to indicate the case name and number.</p> <p>The committee agrees to modify this language for greater consistency with the language in the proposed new rule of court.</p>
20.	Superior Court of Sacramento County Robert Turner, ASO II Research and Evaluation Division	NI	*On the proposed form, FL-327-INFO (now FL-329-INFO), the first bullet point under the fifth paragraph instructs the parties to contact the evaluator immediately to set the initial	The committee agrees to change this section to allow the most flexibility for courts to use this form to educate litigants about their respective local rules, which may require the parties to

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	Commentator	Position	Comment	Committee Response
			appointment date and time. The commentator recommends that this section either be deleted, or it should direct the reader to follow the individual court's policy or instructions about setting the initial evaluation appointment. Some courts that provide court-connected child custody evaluations have a scheduling process in place whereby the evaluators contact the parties to schedule the appointment. As proposed, the language in the form would contradict the court's internal procedures.	contact the evaluator or require the evaluator to contact the parties to set the date and time of the initial appointment.
21.	Superior Court of San Bernardino County Debra Meyers, Director Legal Research Department	A	Requests that the info sheets be translated into Spanish and other languages.	The committee agrees with this suggestion and will do so as resources permit.
22.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	Agrees with proposed changes.	No response required.
23.	Michael Mattice, Judge Superior Court of Solano County	AM	<p>*Re: Form FL-327: Recommends that the order include this statement in bold lettering: "The evaluation report is confidential—unauthorized disclosure of the report or any contents may result in severe sanctions. See Family Code section 3111 and Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328)."</p> <p>Re: Form FL-327-INFO (now FL-329-INFO), recommends replacing the bullet point that states, "Contact the evaluator immediately to set the initial appointment date and time," with this language: "Both parties contact the evaluator today, in writing with copy to the other party or attorney, to set the initial appointment date and time. Include the following with your letter and nothing else: a copy of the Order, both parties'</p>	<p>The committee agrees to modify this section and has incorporated these suggestions, with minor alterations, into the amendments that it is recommending for adoption.</p> <p>The suggested language is most appropriate for a court order, not an information sheet. Therefore, the committee agrees to change form FL-327 to include a section for courts to indicate how the initial contact between the parties and the evaluator will occur. The new section will also include a space for additional instructions regarding that communication.</p>

SPR09-31

Family Law: Child Custody Evaluations (amend Cal. Rules of Court, rule 5.220; revise form FL-327; adopt form FL-328; and approve form FL-329-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>names and addresses, phone numbers and e-mails, and the times you can be reached.”</p> <p>Recommends that FL-327-INFO (now FL-329-INFO) include the statement “Do not contact or give documents to the evaluator except as stated in the Order Appointing Child Custody Evaluator (form FL-327)” under the section entitled ‘What do I need to do after the court has ordered an evaluation?’ ”</p> <p>Commentator provided a copy of local form #327 and recommends statewide adoption of the approach to control document flow and ex parte information being given to the evaluator.</p>	<p>See above response.</p> <p>The recommendation is beyond the scope of this invitation to comment; however, the committee may consider it appropriate for circulation in a future RUPRO cycle relating to rule 5.335 of the California Rules of Court.</p>
24.	Sutter County Family Court Services Jemy Mathews, Court Investigator Yuba City	AM	<p>*1. Page 6-FL-327-INFO (now FL-329-INFO): Under the heading of “What will the evaluator do?” the recommendation is to add a paragraph at end to address limited scope evaluations. The paragraph would state that if a referral is for a limited scope or partial evaluation, the evaluator must stay within the boundaries specified by the court and cannot add information outside of the scope.</p> <p>2. Page 6 of FL-327-INFO (now FL-329-INFO): “What do I need to do after the court orders?” Please add boxes for the judge to check whether the parties are to contact the evaluator immediately or to complete the questionnaire as provided in court and submit the questionnaire to Family Court Services within ___ days.</p> <p>In support of the above changes, the commentator argues that the evaluators in their court contact</p>	<p>The committee agrees to change this section to include that the evaluator will conduct a full or limited-scope investigation.</p> <p>The committee believes that the recommended change is best made to the Order Appointing Child Custody Evaluator (form FL-327), instead of the information sheet. Therefore, the committee agrees change the order to include check boxes for the judge to specify how the initial contact will take place. The new section will also include a space for the court to provide any additional instructions that relate to that communication.</p>

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	Commentator	Position	Comment	Committee Response
			<p>the parties after they have been assigned the case and reviewed the court file and other relevant documents.</p> <p>3. Page 7 of FL-327-INFO (now FL-329-INFO): “How long will the evaluation take?” Please remove the word “written” from the statement that the evaluator will provide a written explanation of the process. Each limited scope evaluation is unique and requires a verbal explanation. Finally, the court orders when the report is due.</p> <p>4. Page 7 of FL-327-INFO (now FL-329-INFO): “What happens after the evaluator completes the investigation?” Please change the word “will” include a recommendation to “may.” We do not make recommendations on limited scope evaluations.</p> <p>5. Page 7 of FL-327-INFO (now FL-329-INFO): “What if I have a complaint concerning the evaluator's performance?” Please add “or the evaluator's supervisor” to the statement “Discuss your concern with the evaluator to try to resolve the issue.”</p>	<p>Rule 5.220(e) requires that all evaluations include a written explanation that clearly describes the process.</p> <p>The committee agrees with these suggestions and has incorporated them, with minor alterations, into the amendments that it is recommending for adoption.</p> <p>The committee agrees to change this section of the form. The new question-heading will be “What if I have an issue about how the evaluation was conducted?” The committee proposes deleting references to licensing boards and including that the parties should seek help from the court to resolve their concern.</p>
25.	Amy A. Velasquez, Psy.D., LMFT FCS Director Merced County	AM	<p>*Re: Form FL-327-INFO (now FL-329-INFO), this commentator does not believe it is appropriate to suggest to parties that, if dissatisfied, they can file a complaint with an evaluator's licensing board.</p> <p>The commentator indicates that each county is required to have local rules regarding complaints associated with a mediator or evaluator and that</p>	<p>The committee agrees to modify this section and has incorporated these suggestions, with minor alterations, into the amendments that it is recommending for adoption.</p>

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	Commentator	Position	Comment	Committee Response
			language was included in the court's local rules that these complaints must be filed with the court and responded to by the Court before any licensing board complaint may be filed. The commentator argues that the California Association of Marriage and Family Therapists has also supported this position and has worked with the Board of Behavioral Sciences for this language to be included and recognized by the board.	

BILL NUMBER: AB 1877 CHAPTERED
BILL TEXT

CHAPTER 215
FILED WITH SECRETARY OF STATE AUGUST 1, 2008
APPROVED BY GOVERNOR AUGUST 1, 2008
PASSED THE SENATE JULY 10, 2008
PASSED THE ASSEMBLY JULY 15, 2008
AMENDED IN SENATE JUNE 17, 2008
AMENDED IN ASSEMBLY APRIL 3, 2008
AMENDED IN ASSEMBLY MARCH 13, 2008

INTRODUCED BY Assembly Member Adams

FEBRUARY 4, 2008

An act to amend Section 3111 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, Adams. Child custody evaluations: confidentiality.

Existing law provides that in any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation, which report shall not be made available other than as specified. In addition, any information obtained from access to a juvenile court case file is confidential and shall only be disseminated as specified.

This bill would authorize the court, commencing January 1, 2010, to impose a monetary sanction for the unwarranted disclosure of a written confidential report, as specified. The bill would require that the Judicial Council, by January 1, 2010, adopt a form that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report; and adopt a rule to require that, when a court-ordered child custody evaluation report is served on the parties, the form shall be included with the report.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3111 of the Family Code is amended to read:

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the

court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a), or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

(d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.

(e) The Judicial Council shall, by January 1, 2010, do the following:

(1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.

(2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.

(f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.